

## BEFORE THE IDAHO BOARD OF TAX APPEALS

IN THE MATTER OF THE CONSOLIDATED	)	APPEAL NOS. 07-A-2552
APPEALS OF JACKLIN LAND COMPANY, LP,	)	& 07-A-2553 (JACKLIN PROPERTIES),
BIOPOL LABORATORY, INC. , HAUN ROAD	)	07-A-2548 Thru 07-A-2551 (BIOPOL),
PROPERTIES, LP and SHENANDOAH IDAHO	)	07-A-2558 Thru 07-A-2576 (HAUN
PARTNERS, LP, from the decisions of the Board	)	ROAD) & 07-A-2554 Thru 07-A-2557
of Equalization of Kootenai County for tax year	)	(SHENANDOAH)
2007.	)	
	)	FINAL DECISION AND ORDER

### AGRICULTURAL EXEMPTION APPEALS

THESE MATTERS came on for consolidated hearing November 30, 2007 in Coeur d'Alene, Idaho, before Board Member Linda S. Pike. Board Members Lyle R. Cobbs and David E. Kinghorn participated in this decision. Attorney John Magnuson appeared for Appellants Jacklin Land Company, LP, Biopol Laboratory, Inc., Haun Road Properties, LP., and Shenandoah Idaho Partners, LP. Present at hearing as witnesses for Appellants were Don Jacklin, Tom Stoeser, Kyle Denning and Tim Davis. Assessor Michael G. McDowell and Appraiser Gordon K. Harnasch appeared for Respondent Kootenai County. These appeals are taken from decisions of the Kootenai County Board of Equalization (BOE) denying and modifying the protests of valuation for taxing purposes of property described by parcel number on Attachment A.

These appeals were consolidated at hearing. All of the properties are farmed together and have the same basis for appeal.

**The issue on appeal is whether the subject lands qualify for an exemption from property taxes pursuant to Idaho Code § 63-604, the agricultural exemption.**

**The decisions of the Kootenai County Board of Equalization are reversed.**

### FINDINGS OF FACT

#### Jacklin Parcels

The total assessed value is \$673,997. 17.0163 acres are assessed as non-irrigated

agricultural land for \$5,785. 13.9211 acres are assessed as industrial lots/acreage. Appellant maintains all the land area qualifies as agricultural property and should receive the benefit of the agricultural exemption for a total assessment of \$10,518.

This property contains 30.9374 total acres on two (2) parcels. The parcels are contiguous with each other and contiguous to a portion of the other property covered by this opinion.

#### Shenandoah Parcels

The total assessed value is \$288,824. 4.094 acres are assessed as non-irrigated agricultural land for \$1,350. 2.824 acres are assessed as commercial lots/acreage. Appellant maintains all the land area qualifies as agricultural property and should receive the benefit of the agricultural exemption for a total assessment of \$2,353.

This property contains 6.918 total acres on four (4) parcels. The parcels are contiguous with each other and contiguous to a portion of the other property covered by this opinion. These parcels range in size from .82 to 2.4 acres.

#### Haun Parcels

The total assessed value is \$2,707,110. Appellant maintains all the land area qualifies as agricultural property and should receive the benefit of the agricultural exemption. Appellant requests the total assessed land value be reduced to \$9,331.

This property consists of 32.11 acres on 19 parcels. The parcels are contiguous on one side with the Jacklin parcels. Each of the Haun parcels is less than two (2) acres in size.

#### Biopol Parcels

The total assessed value is \$936,173. 1.98 acres are assessed as non-irrigated agricultural land for \$647. 8.3684 acres are assessed as commercial lots/acreage. Appellant maintains all the land qualifies as agricultural property and should receive the benefit of the agricultural exemption

for a total assessed value of \$3,518 (rounded).

This property consists of 10.3484 acres on four (4) parcels. The parcels are contiguous to each other and to the other parcels under appeal. These parcels range in size from 1.7 to 4.7 acres in size.

Together the parcels associated with the above appealed assessments comprise the subject property.

### Parties' Cases

Appellants referred to the recent history of the subject property and a 2000 assessment appeal. In 2000, the Assessor removed the agricultural exemption from the subject property. No crop had been taken off the property due to an infestation of noxious weeds. Pesticides were applied to the property to rid it of the weeds in compliance with a County mandate. On appeal in 2000, the BOE upheld the agricultural exemption on the property.

Five (5) years then transpired where nothing changed with the property; the land management practices were no different, and the land continued to be exempt as agricultural property. In 2006, the Assessor again removed the agricultural exemption. Appellants explained the subject parcels have legal entitlements as individual commercial sites, but the land was treated as a single aggregated unit and farmed as such. Again the BOE upheld the agricultural exemption on the property.

In 2007, the Assessor again removed the land from the agricultural lands classification. The BOE upheld the change in exempt status and the land was assessed at its fair market value.

Mr. Stoesser testified the property under appeal was part of a historic 300 acre farm operated by the Jacklin family. The land is currently farmed as non-irrigated or dry land. Over the years, the undeveloped ground has been farmed, and it's anticipated such land will continue to

be farmed in the future. Mr. Stoesser submitted copies of Farm Agreements between Haun Road Properties LP, Shenandoah Idaho Partners LP, Biopol Laboratory Inc. and Jacklin Land Company LP. All of the agreements were dated effective in the spring of 2006 and end during the summer or fall of 2007. The agreements describe the acres that Jacklin Land Company (JLC) agreed to farm for the purpose of growing and harvesting agricultural crops. The agreements also define that JLC will be responsible for all decisions as to crop rotation, cultivation, harvesting and marketing of farm products.

Appellant's exhibit materials included a copy of a portion of the Property Tax Administrative Rules and a copy of Idaho Code § 63-604. These documents specify the requirements of land actively devoted to agriculture. Mr. Stoesser noted part (1)(a)(iv) of Section 63-604 provides a crop does not have to be taken from the property to qualify as agricultural land. Crop rotation is allowed. Agricultural use was argued to include other processes besides harvesting, such as staging equipment, stacking rocks to the side and storing harvested crops.

Several photographs of the subject property were referenced by Mr. Stoesser. The photographs include the stages of the 2006 farming operation, from the early spring discing of the ground, to the new crop sprouting and the crop harvest.

Mr. Stoesser testified all of the land under appeal was disced in the spring of 2006. An aerial photograph showed the disced area with shading. The areas that were newly seeded in 2006 were indicated on another aerial view of subject. Copies of seed receipts and several pages of receipts for custom farming contracts were submitted. According to Mr. Stoesser, between 2002 and 2006, the total acres harvested ranged between 28 and 96. The average harvested acres over that time was 58. It was noted the acreage between the four (4) Appellants was approximately 100. The acres yielding crops varied from year to year due to crop rotations and

other issues. Even though alfalfa was planted, it was not always harvested the same year. Mr. Stoesser explained there were factors outside a farmer's control that dictate whether a crop is harvested or not, such as weather, disease and market price.

Appellants pointed to a receipt for 96 acres of harvested area and noted only ownerships of under five (5) acres must provide a profit (financial) statement. There was testimony the Haun property was swathed and seeded with alfalfa, but no crop was harvested.

Mr. Stoesser maintained Idaho Code requires land be used to produce a crop, but does not require a harvest each year. It was explained the County reviewed each parcel and granted the agricultural exemption only where swathing could be identified. Appellants contended the entire parcel was used for agriculture because un-swathed or boundary areas were used to stack rocks, stage equipment or stack harvested crops -- all agricultural uses.

Appellants' photographs included other Rathdrum Prairie farmland depicting common practices of stacked rocks and stored hay bales. Other photographs showed circular swathed areas with unplanted borders where the property still maintained an agricultural exemption.

Mr. Jacklin testified the Jacklin Land Company oversees the farming operation on the subject property. He testified dry land hay crops have a life span of 3 to 5 years in a rotational program. "Summer fallow" is a recognized practice on Idaho and Washington dry land hay and grain acres for both weed control and water buildup programs. Mandated noxious weed control also affects practices. Chemical weed control is not always used because of potential environmental concerns with adjacent populated areas. Mr. Jacklin explained land is sometimes simply taken out of production for weed control. Tillage of the field dirt allows weed control without chemical treatment. Whether there is the potential for a viable economic crop is also a factor. If it is not economical to harvest, it simply is not done.

Assessor McDowell argued to qualify for an agricultural exemption, land must be actively devoted to agricultural use. It was reported the portions of subject property clearly used for agricultural purposes were assessed as agricultural land. The Assessor testified there was a difficulty in clearly identifying qualifying use when property was platted for future development and significant development had taken place. Under such circumstances, the Assessor believed he was tasked with determining the primary intent of the owner/operator. The actual use of the property becomes more critical. In areas clearly being farmed and not subdivided, the primary purpose was observed to be far more clear. However, when property is subdivided and lots are being sold and developed, a higher degree of scrutiny and care is required due to the significant shift in tax burden.

The County provided an assessment history of the subject property. The Appraiser explained the agricultural exemption was denied in 2000, 2003 and in 2005 on land that did not produce a crop. The acres that were producing were left in exempt status under the agricultural classification. The Assessor reinstated the agricultural use exemption to all the property one year, and the BOE reinstated the exemption two other years.

In 2007, the Assessor removed the exemption from property not in agricultural use. The BOE concurred enough time had passed since this land had last produced revenue or profit, which suggested the ground was no longer viable for present or future agricultural use. Respondent agreed there were reasons for no crops. If the property was owned by a person who relied on the crops for their livelihood, there would either be crops, the property would be sold or traded for land that did produce, or the land would be converted to another use such as development into residential or commercial use.

The County Appraiser noted the subject property had not produced a profitable crop for

approximately six (6) consecutive years.

Respondent's Exhibit No. 1 included a map with the boundaries of the subject parcels and distinguished the four (4) different ownerships. Another aerial photograph detailed the subject property by ownership and showed obvious agricultural use. The exhibit included a copy of Idaho Code § 63-604 and Rule 645 (IDAPA 35.01.03). There were several portions of the Code highlighted and it was maintained for land to be actively devoted to agriculture, the property had to be used to produce field crops. Also highlighted was the definition of "for-profit" which means the enterprise will over some period of time make or attempt to make a return of income exceeding expenses. The County noted as of hearing, the subject property only had expenses to show for the property, but no profit. It was again claimed the subject property had not produced any crops since 1999.

The County referenced the Property Tax Administrative Rule 645 and highlighted section .01.b as follows.

645. LAND ACTIVELY DEVOTED TO AGRICULTURE DEFINED.

. . .

b. Associated Site Improvements. The "associated site improvements" include developed access, grading, sanitary facilities, water systems and utilities. (7-1-99)

The exhibit also emphasized portions of section 645.03.d concerning land of more than five acres.

d. Land, More Than Five (5) Contiguous Acres. Land of more than five (5) contiguous acres under one (1) ownership, *producing agricultural field crops*, nursery stock, or grazing, or in a cropland retirement or rotation program, *as part of a for profit enterprise*, shall qualify for the speculative value exemption. *Land not annually meeting any* of these requirements fails to qualify as land actively devoted to agriculture and shall be valued at market value using appraisal procedures identified in Paragraph 645.02.a. of this rule.

The County presented a 1999 photograph and the Appraiser opined this was the last year the Haun property produced crops. Several other photographs and aerial views from 2000, 2001,

2003, 2004, 2005 and 2007 were submitted to show the development on subject property and the evidence of areas cropped and the areas not cropped.

The County submitted June 2007 photographs showing road edges and ground that is not producing crops. There were comparison photographs of cropped/harvested areas. November 2007 photographs show the Biopol land with asphalt roads, sidewalks and excavation and construction underway. Respondent stated based on these photographs, the property will not qualify for the agricultural exemption in 2008.

Appellants argued agricultural use, or the specifics of a farming operation cannot be identified by a satellite photograph taken one day and the observed use applied for the entire year. A farm is an ongoing operation. It was also noted the statute had no time frame on producing a profit.

### CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of exempt status under the agricultural exemption. This Board, giving full opportunity for all arguments and having considered all testimony and documentary evidence submitted by the parties in support of their respective positions, hereby enters the following.

The issue in this appeal is whether the subject property qualifies in 2007 to be assessed as agricultural land pursuant to Idaho Code § 63-604.

Appellants maintain the subject property is all farmed. Farming agreements with Jacklin Land Company were submitted for the subject property. Appellants contend Idaho Code requires the total area of such land be over five (5) contiguous acres and used to produce field crops. There was testimony all the appealed land was disced in the spring of 2006. All the Haun property and a portion of the Biopol ownership were seeded in May of 2006 with 150 pounds of



alfalfa seed. Receipts were submitted into the record. Appellants noted that to the extent the ground has remained undeveloped, it has been farmed and it is anticipated it will continue to be farmed in the future.

Appellants further maintain only land areas under five (5) acres have to provide a profit statement. Appellants describe a farm as an active ongoing operation and maintained the exemption law for "over five (5) acres" does not specify a profit or revenue must be realized on every acre in every year to qualify.

Respondent maintained the lack of profit over an extended time was the primary basis for removing the exemption. The affected land areas did not produce crops that could be harvested or utilized. No income was demonstrated on these acres where no crop was produced.

Both parties agree platting the subject property does not alone preclude qualification for the agricultural exemption. Idaho Code § 63-602K(2) reads in part:

**63-602K. PROPERTY EXEMPT FROM TAXATION -- SPECULATIVE PORTION  
OF VALUE OF AGRICULTURAL LAND.**

. . .

(2) "Land actively devoted to agriculture" means that property defined by section 63-604, Idaho Code. For purposes of this section, the act of platting land actively devoted to agriculture does not, in and of itself, cause the land to lose its status as land being actively devoted to agriculture if the land otherwise qualifies for the exemption under this section.

This statute also gives authority to the State Tax Commission to adopt rules to implement the section:

(4) The state tax commission shall adopt rules implementing this section which shall provide the procedure by which it shall establish economic rent, average crop rental and capitalization rates and for the publication of crop prices and the discount rate to be used to determine the capitalization rate.

To determine whether the subject property qualifies for classification as agricultural land

the Board looks to the statutory law and its requirements.

63-604. LAND ACTIVELY DEVOTED TO AGRICULTURE DEFINED. (1) For property tax purposes, land which is actively devoted to agriculture shall be eligible for appraisal, assessment and taxation as agricultural property each year it meets one (1) or more of the following qualifications:

(a) The total area of such land, including the homesite, is more than five (5) contiguous acres, and is actively devoted to agriculture which means:

(i) It is used to produce field crops including, but not limited to, grains, feed crops, fruits and vegetables; or

(ii) It is used to produce nursery stock as defined in section 22-2302(11), Idaho Code; or

(iii) It is used by the owner for the grazing of livestock to be sold as part of a for-profit enterprise, or is leased by the owner to a bona fide lessee for grazing purposes; or

(iv) It is in a cropland retirement or rotation program.

Each individual ownership under appeal contains more than five (5) contiguous acres.

According to the record before us, the Board finds the property under appeal is actively devoted to agriculture and thus qualifies for the exemption.

The primary support for the County's decision was based on the "for-profit" definition Section 63-604(7)(b) and Rule 645. And it was held no profit was demonstrated on the subject parcels for a number of years. Section 63-604(7) defines "for profit" together with other key terms presented below.

(a) "Contiguous" means being in actual contact or touching along a boundary or at a point, except no area of land shall be considered not contiguous solely by reason of a roadway or other right-of-way.

(b) "For-profit" means the enterprise will, over some period of time, make or attempt to make a return of income exceeding expenses.

(c) "Platting" means the filing of the drawing, map or plan of a subdivision or a replatting of such, including certification, descriptions and approvals with the proper county or city official.

Property Tax Administrative Rule 645.01.d provides:

d. Land, More Than Five (5) Contiguous Acres. Land of more than five (5) contiguous acres under one (1) ownership, producing agricultural field crops, nursery stock, or grazing, or in a cropland retirement or rotation program, as part of a for profit enterprise, shall qualify for the speculative value exemption. Land not annually meeting any of these requirements fails to qualify as land actively devoted to agriculture and shall be valued at market value using appraisal procedures identified in Paragraph 645.02.a. of this rule. (4-11-06)

In *Roeder Holdings, LLC v. Bd. of Equalization of Ada County*, 136 Idaho 809, 41 P.3d 237 (2001), the Supreme Court addressed the above rule and determined it was unenforceable. The Court found the rule added an additional element not required by the statute; specifically that the production of crops be “part of a *bone fide* profit-making agricultural enterprise.” Producing a profit on lands over five (5) acres is not pertinent to deciding the subject property’s exempt status. The use or non-use of the land as part of an agricultural cropland program is the determinant.

In this case, the Board found each taxpayer land ownership involved more than five (5) contiguous acres and that the land was actively devoted to an agricultural use. This satisfies the requirements to qualify for the agricultural exemption.

Several County photographs titled “fall of 2007 and November 2007” made it obvious some portions of subject land were being converted to a different use. However, the Board notes it is the status of property on January 1, 2007 that controls the outcome of this case:

Idaho Code § 63-205. Assessment – Market value for assessment purposes.  
(1) All real, personal and operating property subject to property taxation must be assessed annually at market value for assessment purposes as of 12:01 a.m. of the first day of January in the year in which such property taxes are levied, except as otherwise provided. Market value for assessment purposes shall be determined according to the requirements of this title or the rules promulgated by the state tax commission.

Based on the record before us and as of January 1, 2007, the subject property does qualify for the agricultural exemption. The decision of the Kootenai County Board of Equalization will be reversed.

## FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decisions of the Kootenai County Board of Equalization denying exempt status to subject parcels be, and the same hereby are, REVERSED. The appealed acreage that was denied exemption is hereby granted exempt status as land actively devoted to agriculture.

IT IS FURTHER ORDERED that any taxes which have been paid in excess of those determined to have been due be refunded or applied against other *ad valorem* taxes due from Appellant(s).

### Attachment A

2007 Appeals of Jacklin Land Company, LP, Shenandoah Idaho Partners, LP, Haun Road Properties, LP and Biopol Laboratory, Inc. in Kootenai County

#### Jacklin Land Company, LP

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|----|----------------------|-------------------------|
| 1. | Appeal No. 07-A-2552 | Parcel No. P00000070300 |
| 2. | Appeal No. 07-A-2553 | Parcel No. P00000070100 |

#### Shenandoah Idaho Partners, LP

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|----|----------------------|-------------------------|
| 1. | Appeal No. 07-A-2554 | Parcel No. P75300060050 |
| 2. | Appeal No. 07-A-2555 | Parcel No. P75300070020 |
| 3. | Appeal No. 07-A-2556 | Parcel No. P75300080010 |
| 4. | Appeal No. 07-A-2557 | Parcel No. P75300080020 |

#### Haun Road Properties, LP

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|-----|----------------------|-------------------------|
| 1.  | Appeal No. 07-A-2558 | Parcel No. P75280020030 |
| 2.  | Appeal No. 07-A-2559 | Parcel No. P75280020040 |
| 3.  | Appeal No. 07-A-2560 | Parcel No. P75280020050 |
| 4.  | Appeal No. 07-A-2561 | Parcel No. P75280020060 |
| 5.  | Appeal No. 07-A-2562 | Parcel No. P75280020100 |
| 6.  | Appeal No. 07-A-2563 | Parcel No. P75280020110 |
| 7.  | Appeal No. 07-A-2564 | Parcel No. P75280020120 |
| 8.  | Appeal No. 07-A-2565 | Parcel No. P75280020130 |
| 9.  | Appeal No. 07-A-2566 | Parcel No. P75280020140 |
| 10. | Appeal No. 07-A-2567 | Parcel No. P75280020150 |
| 11. | Appeal No. 07-A-2568 | Parcel No. P75300030090 |
| 12. | Appeal No. 07-A-2569 | Parcel No. P75300030010 |
| 13. | Appeal No. 07-A-2570 | Parcel No. P75300030020 |

Appeal Nos. 07-A-2552 & 07-A-2553, 07-A-2548 thru 07-A-2551,  
07-A-2558 thru 07-A-2576, & 07-A-2554 thru 07-A-2557

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| 14. | Appeal No. 07-A-2571 | Parcel No. P75300030030 |
| 15. | Appeal No. 07-A-2572 | Parcel No. P75300030040 |
| 16. | Appeal No. 07-A-2573 | Parcel No. P75300030050 |
| 17. | Appeal No. 07-A-2574 | Parcel No. P75300030060 |

Haun Road Properties, LP Continued

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| 18. | Appeal No. 07-A-2575 | Parcel No. P75300030070 |
| 19. | Appeal No. 07-A-2576 | Parcel No. P75300030080 |

Biopol Laboratory, Inc.

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|----|----------------------|-------------------------|
| 1. | Appeal No. 07-A-2548 | Parcel No. P7528005001A |
| 2. | Appeal No. 07-A-2549 | Parcel No. P75300050010 |
| 3. | Appeal No. 07-A-2550 | Parcel No. P75300050020 |
| 4. | Appeal No. 07-A-2551 | Parcel No. P00000070200 |

MAILED May 1, 2008